

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Telephone Number Portability  
Cost Classification Proceeding

CC Docket No. 95-116  
RM 8535

APPLICATION FOR REVIEW

The Bureau's order<sup>1</sup> conflicts with the Commission's number portability cost recovery regulations and the Act itself in two important respects. Bell Atlantic<sup>2</sup> asks the Commission to reverse the Bureau's determinations and to instruct the Bureau not to apply them when it reviews the number portability tariff filings.

Bell Atlantic asks that the Commission act expeditiously on this application. The Bureau's deviations from the Commission's rules are obvious. Local exchange carriers will be filing number portability cost recovery tariffs under those rules over the next couple of weeks. The Bureau will immediately investigate those tariffs, and those investigations must be completed within five months. The Commission needs to provide its guidance to the Bureau so it can be used in those tariff proceedings.

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<sup>1</sup> Telephone Number Portability Cost Classification Proceeding, DA 98-2534 (rel. Dec. 14, 1998) ("*Bureau Order*").

<sup>2</sup> Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company and New England Telephone and Telegraph Company.

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First, the Bureau order would appear to prevent local exchange carriers from recovering through their end user surcharges certain costs that they unquestionably incurred solely to provide number portability.

In the regulations adopted in its number portability cost recovery order, the Commission authorized LECs to recover “their carrier-specific costs directly related to providing long-term number portability.”<sup>3</sup> The Bureau, however, has not followed this direction and has concluded that LECs may not recover certain costs even though they *are*, in fact, “directly related to providing long-term number portability.” As the attached declaration of Robert W. Crandall demonstrates, from an economic perspective, the costs in question are direct number portability costs. The Bureau’s error appears to be caused by the Bureau’s too narrow understanding of what it means “to provide number portability.”

The Communications Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”<sup>4</sup> The last phrase is important — Congress understood that numbers would not truly be portable if consumers suffered a loss of “quality, reliability, or convenience” when they changed carriers.

Therefore, “providing long-term number portability,” as those words are used in the cost recovery rules, necessarily includes enabling numbers to port in a way that customers suffer no “impairment of quality, reliability, or convenience.” The costs that are incurred to ensure that

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<sup>3</sup> 47 C.F.R. § 52.33(a).

<sup>4</sup> 47 U.S.C. § 153(30). This language was picked up by the Commission in its rules. 47 C.F.R. § 52.21(p)

there is no such impairment are “costs directly related to providing long-term number portability” to the exact same extent as the cost of the software that effectuates the port itself.

The Bureau, however, completely ignored these words. In fact, the Bureau seems not even to know that these words are in the statute.<sup>5</sup> Thus, the Bureau brushed aside arguments made by Bell Atlantic and others that certain OSS modifications were necessary to ensure that there was no “impairment of quality, reliability, or convenience” with references to the Commission’s discussion of QoR technology.<sup>6</sup>

As a result, the Bureau would exclude costs to modify operation support systems except “the systems for uploading and downloading LRN information to and from the regional Number Portability Administration Centers (NPACs) and for transmitting porting orders between carriers.”<sup>7</sup> Apparently excluded are costs to modify “existing systems for providing repair and maintenance services, 911 services, service ordering, and other network functions.”<sup>8</sup> However, it was necessary to modify certain systems of these types in order to ensure that customers would experience no impairment of quality, reliability, or convenience. To characterize these modifications as “general network upgrades,” as the Bureau does,<sup>9</sup> is simply not accurate. These changes were made because of number portability, and they would not ever have been made were it not for number portability. A couple of examples illustrate this.

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<sup>5</sup> Bell Atlantic cited the statutory language to the Bureau at 4 of its comments.

<sup>6</sup> *Bureau Order* ¶ 13.

<sup>7</sup> *Bureau Order* ¶ 14.

<sup>8</sup> *Bureau Order* ¶ 8.

<sup>9</sup> *Bureau Order* ¶ 11.

For example, the system that supports 911 service was modified to permit a carrier to update the 911 database for telephone numbers in NXXs assigned to another carrier and to enable 911 personnel to direct database problems to the correct service provider. This work would not seem to fit within the Bureau's narrow reading of the Commission's rules. However, few customers would find porting satisfactory if they might not be able to use 911 or if that service was not as reliable, and the Commission presumably shares this view. These changes were clearly necessary to ensure that there was not impairment of quality and reliability and the cost of making them is a cost of providing number portability.

Bell Atlantic also had to modify a number of systems to enable it to recognize that telephone numbers in NXXs assigned to other carriers had been ported and were, in fact, used by Bell Atlantic customers. For example, Bell Atlantic had to modify certain maintenance and repair systems to permit them to deal with such telephone numbers. If these changes had not been made, customers who ported their telephone numbers in to Bell Atlantic would not have the same quality and reliability of service as other Bell Atlantic customers, or presumably as they had with their previous carrier.<sup>10</sup>

Second, the Bureau found that the LECs could not recover their "advancement costs" — the cost of spending money sooner rather than later. These are real costs — costs for "the initial physical upgrading of the public switched telephone network"<sup>11</sup> — and are, therefore, recoverable.

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<sup>10</sup> The Bureau's apparent decision that billing system changes are not recoverable is inconsistent with the Commission's decision that similar changes in connection with 800 database access should be treated as exogenous because those expenses "were incurred specifically to implement basic 800 data base service" (*800 Data Base Access Tariffs*, 11 FCC Rcd 15227, 15297 (1996)), a standard that is similar to the one contained in section 52.33(a).

<sup>11</sup> *Telephone Number Portability*, 13 FCC Rcd 11701, ¶ 39 (1998) ("*Third Report and Order*").

Because of number portability, for example, Bell Atlantic had to buy switch processor equipment in 1997 and 1998. In the ordinary course of its business, Bell Atlantic would not have needed to buy this equipment until 2000 or 2001. Because it eventually would have needed the equipment anyway, Bell Atlantic does not claim that the whole cost of the equipment is recoverable. However, the cost of advancing the purchases two or three or four years is a direct cost of number portability, precisely because it was incurred specifically to provide number portability and would not have been incurred otherwise.

The Bureau, however, says that a LEC may recover advancement costs, but only to the extent that the equipment actually cost more in the earlier year because of the addition of a number portability capability that otherwise would not have been included. “LECs may claim only the advancement costs associated with the difference between the costs of the upgrade with the LNP functionality and its costs without that functionality.”<sup>12</sup> This, of course, makes no sense, because if the equipment actually cost more because of the number portability functionality, then that already would be a direct cost of number portability and would not be an advancement cost at all.

The recovery of these advancement costs is completely consistent with the Commission’s order, which found that carriers should be allowed to recover “that portion of a carrier’s joint costs that is demonstrably an incremental cost carriers incur in the provision of long-term number portability.”<sup>13</sup> Under this formulation, Bell Atlantic could not recover the entire cost of the processor, but it can recover the incremental cost caused by number portability — namely, the cost of having to buy the processor early.

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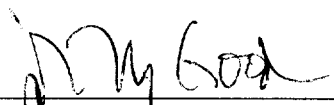
<sup>12</sup> *Bureau Order* ¶ 30.

<sup>13</sup> *Third Report and Order* ¶ 73.

### Conclusion

For these reasons, the Commission should confirm that its rules permit LECs to recover all their costs incurred to provide number portability, including those costs incurred to ensure that customers can port without any impairment of quality, reliability and convenience and the costs of advancing investment which number portability required to be made sooner.

Respectfully submitted,

  
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Dated: January 13, 1999

**Declaration of**

**Robert W. Crandall**

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Washington, DC 20554**

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|--------------------------------|---|------------------|
| In the Matter of               | ) |                  |
|                                | ) | CC Docket 95-116 |
| Telephone Number Portability   | ) |                  |
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**Declaration of Robert W. Crandall<sup>1</sup>**

1. I have been asked by Bell Atlantic to provide an economic analysis of some of the issues raised by the Memorandum Opinion and Order ("Order") released by the Common Carrier Bureau in this proceeding on December 14, 1998. This Order provides guidelines to LECs on the nature of the costs that may be recovered by local-exchange carriers (LECs) for establishment of long-term number portability.

**Summary of Conclusions**

2. The Bureau has provided LECs with guidance as to the nature and extent of the costs that they may recover for establishing long-term number portability, but in at least two respects this guidance is deficient, inconsistent with economic principles, and threatens under-recovery of

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<sup>1</sup> Senior Fellow, Economic Studies, the Brookings Institution, Washington, DC. The views expressed herein are those of the author and should not be construed to represent the views of the Brookings Institution, its Trustees, or its other staff members. My curriculum vitae is appended to this declaration.



the relevant costs. First, the Bureau concludes that LECs may recover the costs of modifying OSS only if such costs are directly *for the provision of* number portability, but not if such expenses result from the "impact of portability on existing systems..." required to maintain service quality on ported lines.<sup>2</sup> This conclusion is at odds with any reasonable economic definition of the direct incremental costs of providing long-term number portability.

3. Second, the Bureau appears to allow the LECs to recover only the incremental "advancement" costs -- the acceleration of capital expenditures -- that are required to achieve long-term number-portability requirements.<sup>3</sup> But these incremental costs are allowed to be recovered directly, whether "advanced" or not. The Bureau should also allow the LECs to recover the additional costs created by advancing of other investments, i.e., the opportunity cost of investing the funds sooner than would have occurred without the requirement of providing long-term number portability.

### **The Issues**

4. The Commission's rules allow LECs to recover their "... costs directly related to the provision of number portability."<sup>4</sup> The Bureau attempts to provide LECs with a set of guidelines that identify these costs. In so doing, the Bureau is attempting to provide a framework that

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<sup>2</sup> Order at par. 8.

<sup>3</sup> Order at par. 30.

<sup>4</sup>47 C.F.R. ¶ 52.33(a).

separates costs attributable to number portability from the costs of functionalities that are related to the ability to deliver a variety of other services. Unfortunately, the Bureau's guidance is mistaken in two respects: (i) the recovery of OSS costs required to maintain service quality on ported lines and (ii) the costs imposed on LECs due to the advancement of certain capital expenditures due to long-term number portability.

5. First, the decision by the Bureau to disallow OSS costs required to maintain the quality of service upon the institution of long-term number portability is clearly in error. The 1996 Telecommunications Act requires LECs to institute number portability without impairment of service quality.<sup>5</sup> If the LECs must modify their OSS to maintain the reliability and quality of service upon the adoption of long-term number portability, these costs are properly included in the domain of costs attributable to number portability. The Bureau would exclude these costs from the cost-recovery mechanism in this proceeding if they were "incurred because of the impact of portability on existing systems for providing repair and maintenance services, 911 services, service ordering, and other network functions."<sup>6</sup> (emphasis supplied) But if number portability degrades service along any of these dimensions, it reduces service quality by any definition.

6. Surely, the Bureau would not consider a degradation of, say 911 services, as inconsequential. If number portability degrades 911 services on ported lines, the Bureau would

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<sup>5</sup> 47 USC ¶ 153(30).

<sup>6</sup> Order at par. 8.

expect the LECs to make the necessary modifications in OSS to restore them. The cost of these modifications would be caused entirely by the adoption of number portability and, therefore, should be recovered by the LECs in the same fashion as any other expenditure that is directly *for the provision*<sup>7</sup> of number portability.

7. Similarly, any advancement of LEC capital expenditures that is required to implement long-term number portability is clearly a cost in and of itself. If the only way to implement number portability is to replace or augment a piece of capital equipment, say, four or five years sooner than otherwise would be required, the opportunity cost of deploying this capital four or five years sooner should be defined as a recoverable expense. This cost is in addition to the incremental cost of the functionality required in the equipment to provide the number portability.

8. The Order provides that the "...LECs may claim only the advancement costs associated with the *difference* between the cost of the upgrade with the LNP functionality and its costs without the functionality." <sup>8</sup> (emphasis supplied) This clearly is in error, for it is not simply the difference in costs that is being advanced. The entire capital expenditure -- the "upgrade" in the Order's language -- is being advanced in time, requiring the LEC to fund the entire investment sooner than it would otherwise have done.

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<sup>7</sup> Id.

<sup>8</sup> Order at par. 30.

9. To the extent that long-term number portability advances the capital expenditure program of any LEC, it increases the discounted present value of capital deployed in delivering regulated services. The LEC is entitled to a recovery of the entirety of this increase in the present value of capital expenditures, not simply the increment in the cost of individual pieces of capital equipment required to deliver long-term number portability.

10. Both of these costs -- OSS modifications to maintain service quality and reliability and the advancement of investment -- are direct incremental costs of number portability. Therefore, from an economist's perspective, they should be recovered in the same way as are the other costs of providing number portability.

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

 1/13/99  
Robert W. Crandall

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CERTIFICATE OF SERVICE

I, Mary Liz Hepburn, hereby certify that on this 13th day of January 1999, a copy of the foregoing Bell Atlantic Application for Review was served by US Mail on the following parties. Where indicated with an asterisk, service was via hand delivery.

  
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